HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 24306 OF 1998

DATED: 27.6.2007

Between:

P. Srinivasa Rao and others

… Petitioners

and

The Government of India, represented by its Joint Secretary (Adult Education) and Director General, National Literacy Mission, Ministry of Human Resources Development, Sastry Bhavan, New Delhi and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 24306 OF 1998

ORAL ORDER:

The seven (7) petitioners are employees of the Shramik Vidyapeeth, Guntur, working as Programme Officer, Assistant Programme Officer, Driver, Attender, Sweeper and Chowkidars, respectively. They are aggrieved at the irregular payment of salaries and in the non-payment of salaries, as per the recommendations of the 5th pay commission.

According to the petitioners, the Government of India in 1967 brought into being the Shramik Vidyapeeth, under a scheme. Pursuant to the federal scheme, the State Government in the Education Department, established the second respondent-Vidyapeeth in 1979. Its jural existence was as a registered society under the Societies Registration Act 21 of 1960. The initial Board of management was comprised exclusively by Government officials of the State. In 1994, the 1st respondent issued instructions for re-constitution of the Board as per its guidelines. The Board was

accordingly re-constituted by an order of the State Government in G.O.Rt.No.374 dated 25.3.1998, for a period of three years.

The revision of pay scales as per the 4th Central Pay Commission was implemented for the employees of the 2nd respondent-Vidyapeeth. Even in respect of the 5th Pay Commission, the petitioners contend, by the order of the 3rd respondent dated 14.10.1997, the benefits of the revision of pay scales was extended to the employees of the 2nd respondent and salaries for August to October 1997 were paid in accordance with the 5th Pay Commission recommendations. However, from November 1997 onwards, the 2nd respondent reverted to the earlier pay scales and denied the petitioners, benefits of the revised pay scales. The payment of salaries is also irregular. With these complaints, the writ petition is filed.

The 3rd respondent has filed a counter affidavit stating as under:

> ***"All the above pay scales are in Central Government Pay Scales sanctioned by the Ministry of Human Resource Development, Government of India as per the recommendations of the Fourth Central Pay Commission. The salaries to the staff of Shramik Vidyapeeth, Guntur are paid from out of the Grant-in-Aid sanctioned by the Ministry of Human Resource Development under the head "Pay & Allowances to staff members". Every year the Grant-in-Aid is being received in 3 instalments from the Ministry of Human Resource Development, Government of India. Usually the salaries are paid on the last working day of every month. We never stopped the payment of salaries to staff when the funds are available with our Shramik Vidyapeeth. As the Grant-in-Aid from the Ministry of Human Resource Development, Government of India was received late, the salaries for the period from October 1996 to February 1997 were paid on 20.3.1997, from August 1997 to October 1997***

were paid on 3.12.1997. This is only due to the late receipt of Grant-in-Aid from Government of India.

The petitioners are working in the Central Government Pay scales as sanctioned and revised from time to time by the Ministry of Human Resource Development, Government of India. The Ministry of Human Resource Development, Government of India revised the pay scales of the employees of Shramik Vidyapeeth in Lr.No:F-39/89-D.III (AE) dt. 9.11.1989 with effect from 1.4.1989 as per the Central Fourth Pay Commission Recommendations. The copies of the orders of Government of India are herewith enclosed. The employees are paid in the revised pay scales as sanctioned by Ministry of Human Resource Development, Government of India from April 1989. The Dearness Allowance and Interim Relief are also revised and paid from time to time whenever sanctioned to the Central Government employees by obtaining the copies of the orders from the local Central Government offices.

The Government of India in Notification Dt. 30.9.1997 of Department of Expenditure, Ministry of Finance issued orders for the pay revision of the Central Government Employees as per the recommendations of the Fifth Central Pay Commission. As the employees of our Shramik Vidyapeeth are paid in the Central Pay scales as per the recommendations of the Fourth Central Pay Commission, the pay scales were revised as per the recommendations of the Fifth Central Pay Commission with effect from 1.1.1996 and the arrears from January 1996 to July 1997 were paid and the salary for the months of August 1997 to October 1997 were also paid in the new scales under a mistaken impression.

The Government of India in the month of November 1997 orally instructed the 3rd respondent to pay the salaries of the employees in the pre-revised scales only. Accordingly the salaries of the employees for November 1997 and December 1997 were paid in the pre-revised scales and the petitioners 1 to 7 received the same under stamped acknowledgements, without any protest. The contention of the petitioner that they raised protest at the time of receiving salaries in pre-revised scales is incorrect. The salaries from January 1998 to August 1998 could not be paid so far, due to non-release of Grant-in-Aid from Government of India. The sanction orders have been received recently from Government of India releasing Rs.6,30,000/-. The Annual

Budget for running the 2nd respondent office is Rs.12,30,000/- before the recommendations of V Central Pay Commission. The payment of salaries will be arranged immediately on receipt of Demand Draft from Government of India.

I submit that the New scales will be implemented as per the Fifth Central Pay Commission recommendations on receipt of orders from Government of India, Ministry of Human Resource Development."

According to the counter affidavit of the 1st respondent, it has no concern with the 2nd respondent-institution; the 2nd respondent is an independent and autonomous institution having its own jural identity; the 1st respondent merely provides grant-in-aid according to a formula evolved for the purpose, on an yearly basis. A lumpsum grant-in-aid is paid. The 1st respondent also contends that the employees of the 2nd respondent are not Government of India employees. They are appointed by the Board of Management of the 2nd respondent, which is in overall control of the administrative and financial affairs of the second respondent. The 1st respondent categorically disclaims that the 2nd respondent is an instrumentality of the 1st respondent. It is further asserted that the 1st respondent did not issue any orders for implementation of the 5th Central Pay Commission revised pay scales to the employees of the 2nd respondent and that if the 2nd respondent has decided to extend to its employees the benefit of the 5th Pay Commission, it is at liberty to do so, in accordance with its resources.

Though counter affidavits had been filed by the respondents 1

and 3 in 1998, the petitioners did not file any affidavit in rebuttal or refutation of the averments in these counter affidavits. The State Government is not a party to this writ petition.

In these circumstances, since the petitioners are now being paid salaries though in accordance with the 4th Central Pay Commission recommended pay scales and as the petitioners have not established that they are employees of the Government of India, they have not made out any case for issuing a Writ of Mandamus for extending to them the benefit of the 5th Central Pay Commission recommended scales of pay.

The 3rd respondent's counter states that the payment of salaries is dependent upon the grant-in-aid released by the Government of India. The Government of India's counter, by implication states that grant-in-aid is computed on the basis of the 4th Pay Commission pay scales and that the 3rd respondent had erred in extending the 5th Pay Commission benefits without ascertainment of the financial position.

For all these reasons, which are unrebutted by the petitioners, the petitioners are not entitled for any relief. The writ petition is accordingly dismissed. No costs.

GODA RAGHURAM, J

Date: 27.6.2007

CVM